

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**APPLICATION OF MEMPHIS NETWORKX, LLC
FOR A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE
TELECOMMUNICATION SERVICES AND JOINT
PETITION OF MEMPHIS LIGHT GAS & WATER
DIVISION, A DIVISION OF THE CITY OF
MEMPHIS, TENNESSEE ("MLGW") AND A&L
NETWORKS-TENNESSEE, LLC ("A&L") FOR
APPROVAL OF AGREEMENT BETWEEN MLGW
AND A&L REGARDING JOINT OWNERSHIP OF
MEMPHIS NETWORKX, LLC.**

DOCKET NO. 99-00909

**MOTION FOR ORDER TO ALLOW ADDITIONAL DISCOVERY AND TO
AMEND PROCEDURAL SCHEDULE**

Intervenor, Time Warner Communications of the Mid-South ("TWC"), respectfully moves the Tennessee Regulatory Authority (the "Authority") to issue an order permitting it to take discovery depositions prior to the hearing of this cause, scheduled to begin on May 1, 2000. In support of this motion, TWC would respectfully state and show to the Authority as follows:

1. Joint Petitioner, Memphis Light Gas & Water ("MLG&W") is a local governmental entity as defined by state law. If approved by the Authority, as required by TCA § 7-52-103(d), MLG&W will acquire a financial and voting interest in the Applicant, Memphis Networkx, LLC ("Memphis Networkx"), which is seeking a Certificate of Public Convenience and Necessity to provide telecommunication services in Tennessee. In order to purchase its equity interest in Memphis Networkx, MLG&W has allegedly created its telecommunications division

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for the purpose of making an interdivisional loan from the MLG&W electrical division. As a municipally owned electric, MLG&W and its divisions are subject to the requirements and obligations of TCA § 7-52-401 et seq., which, without limitation, relate to interdivisional loans, cross-subsidization, and third-party contracts.

2. As an arm or division of the municipal government of the City of Memphis, the Memphis City Council must approve MLG&W funding. The Council approval process is similar to the process by which a corporate board of directors of a privately-owned telecommunications service provider approves funding for its business operations. In applications for authority to provide telecommunications services, such as the one subject to this proceeding, applicants are required to prove that they have received requisite approval from the body which oversees its operations.

3. The parties in this proceeding have conducted traditional discovery by way of written questions and data requests. In addition, TWC has conducted an investigation in preparation for the hearing of this matter, which includes, in part, written public records requests served on MLG&W.

4. After review of the information and documentation resulting from its formal discovery in this docket, the public records requests, and its own informal investigation, TWC submits that the factual complexity of this case is such that the hearing cannot be orderly conducted without further discovery. Specifically, it is apparent that discovery depositions of material witnesses are required, especially for those witnesses who will testify at the hearing. TWC's investigation has revealed

that no apparent public explanation, discussion, or deliberation about MLG&W's participation as a member of Memphis Networx has occurred, even though MLG&W is a local governmental entity. TWC emphasizes that these facts have only recently come to light; TWC learned about the non-public nature of the discussions surrounding the venture within the past several weeks. In support of its position, TWC attaches to this Motion the following documents:

- a) Exhibit 1, the agenda and transcript from the March 4, 1999, meeting of the MLG&W Board of Commissioners, evidencing that the members did not publicly discuss the proposed venture;
- b) Exhibit 2, the notes from a July 7, 1999 MLG&W employee meeting, demonstrating the intent to conceal telecommunications division funding from the Memphis City Counsel (See statements made by Marc, MW 00174);
- c) Exhibit 3, the agenda and transcript from the October 21, 1999, meeting of the MLG&W Board of Commissioners, evidencing again that the members did not publicly discuss the proposed venture;
- d) Exhibit 4, transcript excerpts from the November 16, 1999, meeting of the General Services and Utilities Committee of the Memphis City Council, demonstrating that there was no discussion of the proposed project before the appropriate council committee prior to the approval of the MLG&W 2000 Budget;

- e) Exhibit 5, the agenda and transcript of the December 7, 1999, meeting of the Memphis City Council, demonstrating that here again, no public discussion was made of the proposed venture and its budget allocation;
- f) Exhibit 6, an excerpt from the MLG&W 2000 budget submitted to the City Council for review (consisting of 5 pages), showing that the "telecommunications division" was not treated in the same distinct manner as MLG&W's water, gas, and electric divisions, and, furthermore, that the twenty-million (\$20,000,000.00) dollar loan funding the telecommunications division was submitted as a line item to the electric division budget; and
- g) Exhibit 7, a March 24, 2000, letter from Brent Taylor, Chairman of the General Services and Utilities Committee of the Memphis City Council, to Larry Thompson, MLG&W Senior Vice President, evidencing that the council has no personal knowledge of MLG&W's participation in the Memphis Networx venture.

5. In support of the application, the Applicant and Joint Petitioners have submitted a resolution adopted by the Board of Commissioners of MLG&W. This resolution purports to authorize MLG&W's participation in the Memphis Networx venture. TWC asserts that MLG&W's position is erroneous, and attaches Exhibit 8, the agenda and excerpts from the minutes from the MLG&W Board of Commissioners meeting, held on August 19, 1999, demonstrating that there was no public discussion among the members during which the resolution was adopted. It follows, therefore, that either the board members approved the venture without

reviewing any information or that someone privately supplied and discussed information with them. TWC has been unable to discover the nature and extent of any materials or information supporting the venture offered by MLG&W management to the commissioners.

6. TWC is concerned that MLG&W has authorized and commenced construction of its Memphis Network's telecommunications network facilities prior to obtaining approval from the Authority. In support of its concern, TWC has attached the following exhibits to this motion:

- a) Exhibit 9, a letter authored by Alex Lowe of A&L Underground, LLC to MLG&W employee, Wade Stinson, dated June 1, 1999, confirming earlier verbal authority to install underground facilities in the publicly owned right-of-way. Intervenor, TWC, Time Warner Telecom of the Mid-South, L.P., and the Tennessee Cable Telecommunications Association filed a Data Request propounded to the Applicant, which requested information concerning such construction;
- b) Exhibit 10, the specific Data Request and the Applicant's and Joint Petitioners' response, showing their assertion that no construction has been conducted; and
- c) Exhibit 11, a schedule of completed construction locations, provided by A&L Underground, Inc., showing that construction has been conducted.

7. It is TWC's position that the nature and extent of MLG&W's role and participation in the organization and operations of Memphis Network has not been fully disclosed, and, furthermore, that the information, which has been made

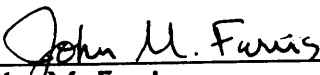
available to TWC, is inconsistent and irreconcilable. The five pre-hearing and status conferences, as well as the April 11th meeting before the Directors, illustrate the parties' inability to mutually resolve the inconsistencies revealed by TWC's investigation.

8. TWC submits that discovery depositions would provide the Intervenor the opportunity to assimilate relevant and material evidence, which remains undisclosed to date. Without this opportunity, the Intervenor's ability to fully present relevant proof at the hearing will be materially and substantially impaired. Moreover, these depositions will likely resolve factual conflicts prior to the hearing, and, consequently, would allow for a more orderly hearing.

WHEREFORE, the Petitioner prays that its request to conduct discovery depositions be granted, and that such depositions take place during the week of April 17, 2000.

Respectfully submitted,

FARRIS, MATHEWS, BRANAN,
BOBANGO & HELLEN, P.L.C.



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CERTIFICATE OF SERVICE

I, John M. Farris, hereby certify that I have served a copy of the foregoing **MOTION FOR ORDER TO ALLOW ADDITIONAL DISCOVERY AND TO AMEND PROCEDURAL SCHEDULE** on the parties listed below, by depositing copy of same in the U.S. Mail, postage prepaid or by hand delivery, as designated below, this the 14th day of April, 2000.

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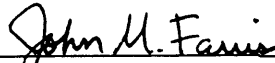
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